



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 200440

PRELIMINARY RECITALS

Pursuant to a petition filed on November 11, 2020, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit regarding FoodShare benefits (FS), a hearing was held on December 8, 2020, by telephone.

The issue for determination is whether The agency correctly determined petitioner's liability for a FoodShare overpayment in the total amount of \$2,764.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's wife applied for MA on 11/27/17.

3. Petitioner’s wife applied for FS on 12/14/17.
4. MA was opened for members including petitioner, his wife, and their child.
5. Petitioner’s wife completed the FS interview by phone on 1/4/18.
6. The agency sought verification of earned income.
7. On 1/23/18 petitioner’s wife, the case head, was sent a notice by the agency informing her that she was required to report if her household income exceeded \$1,701.67.
8. Quarterly wage records from the state wage records indicate earned income for [REDACTED] [REDACTED] for [REDACTED] beginning in January 2018. This income was not reported to the agency.
9. State wage records show quarterly earnings for the household which, if divided to reflect monthly earnings show the household gross income as follows:

March 2018	\$5,895.76
April 2018	\$5,895.76
May 2018	\$5,895.76
June 2018	\$5,895.76
10. Petitioner’s wife applied for FS in April 2019. She reported no income from [REDACTED] due to no longer working there since March 2019.
11. On 4/29/19 petitioner’s wife, the case head, was sent a notice by the agency informing her that she was required to report if her household income exceeded \$1,777.50.
12. State wage records show quarterly earnings for the household which, if divided to reflect monthly earnings show the household gross income as follows:

April 2019	\$2,926.25
May 2019	\$2,926.25
June 2019	\$2,926.25
July 2019	\$2,926.25
August 2019	\$2,926.25
September 2019	\$2,926.25
13. The agency sought verification information from employers and from petitioner and his wife.
14. The agency calculated an overpayment based on the information provided which was incomplete. For those periods in which the agency lacked verification from employers or petitioner and his wife the agency relied on quarterly wage records reported to the state by the employers.
15. The agency issued overpayment notices to petitioner dated 10/14/20 for claim [REDACTED] for the period from 3/1/18 to 6/30/18 in the amount of \$1,364; and claim [REDACTED] for the period from 4/23/19 to 9/30/19 in the amount of \$1,400.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid,

even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

An FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook, App. 8.1.1.1.

The Department's case is premised, in part, upon the state wage match records which is wage information provided to the state by employers. When the state received this income information from the petitioner's and her husband's employers it noted that the reported wages exceeded the budgeted income for the group. The Department then requested verification which was not provided by employers or petitioners. The agency correctly relied on quarterly wage records as the best information available to the agency.

The Department argues that the state wage match record and the information provided by the employer shows that the household income was so high as to make the family ineligible for any FS allotment per FSH 8.1.2. It follows, that the entire sum of FS issued during this time should be recovered.

At hearing, petitioner was represented by [REDACTED] [REDACTED] who was that applicant and case head. She stated that any failure to report was unintentional. She also explained that she had a new baby and was working and going to school. She stated that she did her best to report, however. She stated that she moved from North Carolina to Wisconsin in September 2017. Petitioner also explained that her work and pay varied due to the type of work she was doing.

Unfortunately for petitioner, the agency presented a great deal of records and detail reflecting income and benefits granted during the time periods in question. Petitioner offers some supposition and incomplete recollections. I note that the reason or fault for overpayments does not matter in FS cases. The only question is whether benefits were overpaid. The agency need not demonstrate fault or intent to defraud. The agency's case is simply stronger than petitioner's. The agency prevails.

CONCLUSIONS OF LAW

The Department did not err in determining petitioner's liability in FoodShare claim [REDACTED] for the period from 3/1/18 to 6/30/18 in the amount of \$1,364; and claim [REDACTED] for the period from 4/23/19 to 9/30/19 in the amount of \$1,400.

THEREFORE, it is ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

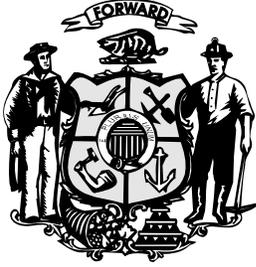
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of January, 2021

\s _____
John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 11, 2021.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability